

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING CLAIMED PROTECTED MATERIALS**

Southern California Edison (Edison) has filed its Motion for Public Release of Certain Protected Information Contained in Its December 10, 2003, Testimony. The motion was filed on April 22, 2004. The motion pertains to information provided by Southern California Gas Company (SoCalGas) during this proceeding. The information was initially designed as Protected Materials under a modified protective order negotiated between these parties and approved by Administrative Law Judge (Law & Motion) Sarah R. Thomas on November 22, 2003. During the evidentiary hearing, Edison expanded its motion to include documents attached to its subsequent testimony and to documents marked as exhibits for the hearing. Invoking Section 16 of the modified protective order, Edison now asks that certain information no longer remain protected. If this request is granted, this information would become public.

Fulfilling their "meet and confer" obligations in such matters, Edison and SoCalGas have communicated repeatedly since the motion was filed to narrow

the documents and information in dispute. While they have had some success in reducing the number of documents in dispute, they have now filed a Joint Status Report Regarding Protected Materials (July 23, 2004). The Joint Status Report identifies 29 sets of documents, set forth as attachments to prepared testimony or introduced during the evidentiary hearing, that remain in dispute. For each set, SoCalGas has summarized its reasons for maintaining the protected or confidential status of the documents and Edison has summarized its arguments for making the information public. By addressing the status of these document sets, this ruling determines the remaining issues under Edison's motion, as expanded during the evidentiary hearing.

As a preliminary matter, Edison faults SoCalGas for not submitting an affidavit satisfying the requirements announced by *Stadish v. Superior Court*, 71 Cal. App. 4th 1130 (1999) for applying Evidence Code § 1060 (trade secret privilege) to discovery. I disagree because, under the circumstances, a Joint Status Report is an expeditious method of presenting these disputes to the Commission for resolution; and, like all pleadings, the report is subject to Rule 1's prohibition of false statements of law or fact. Whether by an affidavit or a submission governed by Rule 1, SoCalGas has the burden of establishing confidentiality for each document set; the company's failure to offer specific and convincing justifications for its claim works to its disadvantage.

In evaluating confidentiality claims, the Commission generally considers these factors:

- What specific privilege the claimant believes it holds and may assert to prevent disclosure of the information, explaining in detail the applicability of that privilege to the information for which confidential treatment is requested.

- When the claimed privilege involves a balancing of public interests for or against disclosure, how the disclosure of the information works against the public interest because there is a necessity for preserving the confidentiality of the information.
- How the claimant keeps the information confidential and whether the information has ever been released to other persons.
- For older information, how the business sensitivity of the information still remains since the proprietary value of such information declines over time and the balance of interests for or against disclosure changes accordingly.

With these factors in mind, I consider SoCalGas' confidentiality claims to the following materials identified in the Joint Status Report:

Attachments to Edison's December 10, 2003, Direct Testimony that SoCalGas Still Maintains as Protected Material

Southwest Flow Model, Attachment 3-3

Edison seeks release of what is known as SoCalGas' Southwest Flow Model. The model estimates gas flows and prices at the southern California border. Edison claims that much information about the model has already been released in both parties' prepared testimony.

SoCalGas' witness James P. Harrigan does discuss the model's forecasts at different times and how they compare to actual deliveries. Edison also discusses many of the model's major components (see page 3-3 of Edison's December 10, 2003, prepared testimony) and SoCalGas the longer requests that Edison's testimony be protected in this regard.

Upon reviewing the Southwest Flow Model in camera, I find that the model is a series of spreadsheets and charts, totaling 135 pages. While the components of the model have been generally described and specific forecasts

(model outputs) mentioned, many details of the model have not been publicly released. SoCalGas represents that the model is still used in its strategic planning for gas procurement; and, if the model were made public, the information would provide competitors with the identity of specific model components and the interrelationship (logic) among these components resulting in a competitive disadvantage to SoCalGas. SoCalGas also represents that it has not otherwise made this model public.

The Commission's rules strike a balance between making models available for other parties in a proceeding (Rule 74.1) and protecting a company's confidentiality interest in the model (Rule 74.7). Edison has had access to the model during this proceeding and has been able to formulate its testimony accordingly. SoCalGas has also established why the model should remain confidential as protected proprietary information, as it is used in ongoing decisionmaking. SoCalGas' claim of confidentiality is SUSTAINED.

2000 Summer Injection Plan, Attachment 3-5

The 2000 Summer Injection Plan is a one-page document, dated March 30, 2000, providing projections for retail core burn, net purchases, injection, purchased inventory, Hub position, and core physical inventory from March to October 2000. Edison seeks release of this document, saying that SoCalGas has not carried its burden of explaining why the information should be protected. Also, Edison indicates, SoCalGas has not maintained the information as confidential.

The document is a plan that, according to Edison's expert witnesses (Carpenter & Levine), varies significantly from the actual gas management during the March-October 2000 period. Nevertheless, SoCalGas argues that the document would provide competitors with a "blueprint" of the company's gas

injection and purchase plans for any future summer starting with a similar inventory volume.

SoCalGas' showing is insufficient for carrying its burden of establishing why the document should remain confidential. The document is over four years old. SoCalGas has failed to explain how the many changes in supply, the market, and regulatory policies during the ensuing years would still produce a situation where knowledge of this plan would benefit the company's competitors. SoCalGas' claim is unduly speculative; and, therefore, its confidentiality claim is DENIED.

2000 Summer Injection Plan, Attachment 3-16

Attachment 3-16 consists of ten pages, all titled "2000 Summer Injection Plan," that are updates of the March 20, 2000, plan discussed in the previous section. With intervals of one to four weeks, these updates start on April 18 and end on August 21. The updates vary in terms of assumptions, targets, and the type of information included. As the weeks went by, actual performance data is substituted for projections, thereby necessitating changes in forecasts.

In response to Edison's request that this attachment be made public, SoCalGas responds that the updated information will reveal to competitors how the company reacts under certain market conditions. This attachment may indicate how SoCalGas reacted to market conditions in 2000, but the company has failed to establish that current or prospective market conditions are so similar to 2000 conditions as to justify continuing confidential treatment. SoCalGas' claim is unduly speculative; and, therefore, its confidentiality claim is DENIED.

Strategy Report—GCIM Performance Summary, Attachment 3-9

SoCalGas' Strategy Report, Attachment 3-9, is a two-page spreadsheet that documents the performance of the company's Gas Acquisition Group from April 2000 to March 2001. Edison has used some of the information from Attachment 3-9 in its prepared testimony (e.g., Figure 1 in December 10, 2003, testimony), but the information is presented in summary form—not the detailed source of revenue documented in Attachment 3-9.

SoCalGas supports confidentiality treatment for this attachment on the basis that the information reveals how the company does business and evaluates risk. The document, however, is a three year-old report of actual performance; and this information is crucial for a complete understanding of market conditions and SoCalGas' market behavior during the price hikes of 2000-2001—the subject of this and other regulatory proceedings. While the document does provide information about SoCalGas' business practices and strategy, the interest of the public and decisionmakers in understanding the effectiveness of the Gas Cost Incentive Mechanism (GCIM) and the factors leading to market dysfunction outweigh SoCalGas' claim of confidentiality. SoCalGas' confidentiality claim is DENIED.

Fax Cover Sheets and Credit Exposure Reports, Attachment 3-21

Attachment 3-21, totaling 46 pages, contains a series of monthly faxes (March 2000 to June 2001) from SoCalGas to Sempra Energy (Treasury). Each fax cover sheet summarizes SoCalGas' credit exposure based on credit extended to approximately 53 entities or "counterparties." Attached to each fax cover is detailed information concerning SoCalGas' credit exposure for each counterparty.

In its prepared testimony, Edison appears to make only one reference to Attachment 3-21, saying that it is inconsistent with other SoCalGas evidence about how credit was factored into the company's planning and decisionmaking processes. Attachment 3-21, however, contains detailed credit information about many entities not subject to this investigation. Edison also argues that SoCalGas has agreed to make public other attachments (3-8, 3-10, 3-15, and 3-26) that contain some of the information set forth in Attachment 3-21. While these other attachments do identify many of SoCalGas' counterparties, the attachments generally describe border sales by counterparty and by day. Where these attachments describe credit information, it is by individual transaction and does not address the detailed credit exposure analysis set forth in Attachment 3-21.

Disclosure of the Attachment 3-21 information, which is commercial and financial, may detrimentally impact future business relationships between SoCalGas and its counterparties and indicate to SoCalGas' competitors the extent of its ability to extend credit. Under these circumstances, SoCalGas has met its burden in establishing the confidentiality of this document; and therefore, SoCalGas' claim is SUSTAINED (however, the first page of Attachment 3-21 is the data request and response and is not protected).

Interoffice Memoranda re Authority for Traders and CEH Operating Guidelines, Attachment 3-23

This attachment contains two types of information: a series of monthly memos to SoCalGas' Gas Acquisition staff setting forth the trading limits for each staff employee (pages 2-8); and "California Energy Hub Operating Guidelines" (pages 9-22). SoCalGas asserts that the memos are confidential since they indicate how the Gas Acquisition staff conducts its business and that similar trading limits are in effect today. In its testimony, Edison uses these memos to

conclude that Hub activity is only limited at the individual transaction level. SoCalGas seeks to protect the Hub Operating Guidelines as confidential since the release of this document would indicate what factors are important in Hub operation, thereby weakening SoCalGas' negotiating position in future Hub transactions.

Both types of information are commercial and financial. As Edison argues, much of the Hub Operating Guidelines already appear in SoCalGas' on-line tariff. The Operating Guidelines provide an overview of Hub services and how it is operated. The public interest has a strong interest in this information since both the Commission and FERC regulate the Hub. The release of this descriptive information is unlikely to commercially disadvantage SoCalGas.

The memos to the trading staff are more proprietary. Edison's testimony makes only a general reference to the existence of staff trading limits. While the trading staff is likely to have changed in the two years since the last memo, the type and typical trading limits could be attributed to existing staff by negotiating parties, thereby commercially disadvantaging SoCalGas.

SoCalGas' confidentiality claim to the trading limit memos (pages 2-8) is SUSTAINED (however, the first page of Attachment 3-23 is the data request and response and is not protected). SoCalGas' confidentiality claim to the Hub Operating Guidelines (pages 9-22) is DENIED.

2000-2001 Winter Gas Acquisition Guidelines, Attachment 3-25

As SoCalGas admits, this document is similar to the Summer Injection Plan, Attachment 3-16, discussed above. For the same reasons, SoCalGas' confidentiality claim is DENIED. Additionally, while SoCalGas indicates that the "format of the document" is still in use, that format is already disclosed in

Figure 6-3 of Edison's testimony, a figure that both parties have agreed can be made public.

Gas Acquisition Committee Meeting Agendas, Minutes, and Handouts, Attachment 3-27

These materials are from periodic meetings of SoCalGas' Gas Acquisition Committee for the period of March 27, 2000, to May 24, 2001. SoCalGas claims that the documents disclose the committee's strategic decisionmaking processes under various market conditions and that the format of these materials is still in use. Edison argues that SoCalGas has quoted from these materials in its own public testimony.

The materials are three to four years old and concern the unique market conditions during that time. SoCalGas' claim that these historic materials would benefit current traders is speculative. The format of these materials has no proprietary value; the agendas repeatedly use such commonplace topics as "gas price outlook" and "risk management." SoCalGas' confidentiality claim is DENIED.

SoCalGas Responses to Edison's DR1-43 re Hedging Strategy, Attachment 4-3

This attachment contains 46 pages describing SoCalGas' hedging strategies beginning March 2000. SoCalGas had agreed to release the results of these strategies and consents to the public release of pages 1 (data request and response), 2, 5-8, 18, 25, 28-33, 35, 36 (data request and response), and 40-43. These pages are ORDERED disclosed.

As for the balance of the materials, SoCalGas argues that these strategies are methodologies that still have proprietary value and may be used prospectively by the company. Upon review, these materials are a detailed discussion of SoCalGas' market strategies. Like a play book falling into the hands of an opposing team, the release of these commercial and financial

documents would provide other traders with insights that would work to the competitive disadvantage of SoCalGas and its customers. Except for the specific pages previously mentioned, SoCalGas' confidential claim to Attachment 4-3 is SUSTAINED.

SoCalGas Responses to Edison's DR2-4 re Industry Hills Planning Conference, Attachment 5-5

Most of this attachment appears to be a summary, in bullet form, of SoCalGas' Gas Acquisition team's planning and strategy conference in April 2000. The summary is divided into several categories (e.g., "team issues") and is followed by tables and charts including one on "Year 7 Stretch Goals." Many of the summarized points are typical organization platitudes (e.g., "Don't waste time") while the market-related information discloses little in detail about strategy and is severely dated. The table, "Year 7 Stretch Goals," is a summary of the type of document set forth in Attachment 3-9, for which I have previously denied confidentiality. SoCalGas has failed to demonstrate why this dated information should remain confidential; its claim is DENIED.

Noncore Winter Activities, Attachment 6-3

This attachment is a two-page document, apparently prepared in January 2001, describing non-core activities during November and December 2000. SoCalGas claims that the attachment is a template, still used today, containing the critical elements of its procurement, storage, and monitoring activities. In its testimony, Edison uses this attachment to conclude that only the Gas Acquisition team knew the breakdown between its storage inventory and that of non-core customers.

The information, while historic, is quite relevant to the purposes of this proceeding, i.e., the causes for gas price hikes during this period. The public's

and decisionmakers' understanding of the reasons for market dysfunction during this period outweigh any interest SoCalGas has in keeping the historic information confidential. SoCalGas' confidentiality claim is DENIED.

SoCalGas' Responses to Edison's DR1-30 re Seasonal Operations Plans, Attachment B-5

This document is titled, "Southern California Gas Company, Seasonal Operations Plan, November 1, 2000-March 31, 2001." The document contains discussions of storage field capacities and rights, operational guidelines, guidelines for peak days, and tariff information (already public). The location of facilities is generally described, but information about the operations and maintenance of these facilities is more specific.

SoCalGas seeks to protect this information because of its potential value both to competitors and terrorists seeking to damage these facilities. The document is three years old, but the operations and maintenance information is of the type that likely will be used repeatedly. This information would provide competitors with detailed information on operations and maintenance schedules, from which cost information could be derived. Also, the location and capacity of natural gas storage fields are types of information that need not be publicized in this proceeding. The first page of Attachment B-5 (data request and response) and pages 19-21 (SoCalGas's tariffs) are public information and are not protected. Otherwise, SoCalGas' confidentiality claim to this attachment is SUSTAINED.

Documents from Edison's May 19, 2004, Supplemental Testimony

SoCalGas Response to Edison's DR7-8 re Reduction in Core Storage Reservation, Attachment 1

This document is a mix of materials, but the majority of the pages (9-62) comprise a set of gas management scenarios that were prepared in May 1999. While the data may be stale, SoCalGas represents that the analysis is relevant today in assisting the company in managing core assets. These scenarios, extending over a range of conditions, are developed in great detail. They expose the components and methodology of SoCalGas' strategic planning, and such exposure would likely work to the company's competitive disadvantage. SoCalGas now indicates that pages 16 and 20 can be removed from Protected Materials status. Except for the data request and response and pages 16 and 20 (which are not now protected), SoCalGas' claim of confidentiality for these documents (pages 9-15, 17-19, 21-62) is SUSTAINED.

The remaining materials (pages 3-8) appear to be from a previous Commission proceeding (OII 99-07-003). Some of these pages appear to be redacted versions of documents. SoCalGas has not asserted that these pages were deemed confidential in the prior proceeding. The documents appear to be a 1999 "snap-shot" of conclusions about the pros and cons of a settlement. Without an additional showing, this historical information is not entitled to confidential treatment; SoCalGas' claim as to pages 3-8 is DENIED.

Draft Winter Hedge Strategies from Mike Emerson's Files, Attachment 9

The attachment is a series of drafts of a document titled "Winter Hedging Strategy." The drafts are in various stages of completion and each cites September 28, 2000, as the preparation date. The purpose of the document is to

explore strategies to insulate core customers from expected natural gas increases that winter. SoCalGas indicates that these trading and risk management strategies are still used by the company; however, the attachments are only draft with no indication that any specific version was every finalized. The discussion about hedging is quite general, as would be found in a corporate finance textbook. The limited use of data is either hypothetical or refers to 2000 market conditions. SoCalGas has not sustained its burden for protecting this attachment; the company's claim is DENIED.

One page document titled “System Demand Forecast and Southwest Flow Forecast Through 2001, Attachment 13

The document consists of less than 30 lines of text divided into three parts: “Similar methodology is used for both purposes,” “Caveat: The future may change,” and “Observations.” The first part discusses the methodological differences in two forecasts in a general way—certainly not in the detail contained in the Southwest Flow Model (for which I have recognized protection). The other two parts of the document consist of platitudes or commonly known information. In all, the information concerns 2001 market conditions, is too stale, and is too general to be afforded confidentiality protection. SoCalGas' claim is DENIED.

Documents from Edison's June 23, 2004, Supplemental Testimony
Gas Acquisition Committee Minutes, Attachments 1, 15 & 16

These attachments consist of agendas and supporting materials for meetings of SoCalGas' Gas Acquisition Committees on January 23, 1998; September 18, 1996; and October 18, 1996. These documents are from six to eight

years old. They also raise the same issues as I rejected when considering 3-27, above.

SoCalGas' claim that these historic materials would benefit current traders is speculative. As the agendas repeatedly use commonplace terms, the format of these materials has no proprietary value. SoCalGas' confidentiality claim is DENIED.

Supply/Demand Balance Projections for February, March, and April 1998, Attachments 5, 6, & 7

These documents are primarily summaries of regional gas supply and demand conditions for early 1998. Each of the reports does make a short projection of the gas storage plan for the next month. SoCalGas argues that these documents disclose corporate decisionmaking processes under various market conditions, as well as the factors the company deems important for procurement purposes. The company also seeks to protect the format of these documents.

The supply and demand condition information is historic (almost four years old) and could likely be constructed from other public sources. The documents have no novel format worthy of protection. The prospective storage plans may disclose some corporate thought processes but in a general way and based on dated market, system, and regulatory conditions. SoCalGas' confidentiality claim is DENIED.

Presentation—April 1996-El Paso Capacity From San Juan Will Not Fill Storage, Attachment 12

The attachment is a chronology of SoCalGas' transactions involving gas from the San Juan, Thoreau, and Permian fields, as well as Hub and hedging activity. The chronology extends from April 1996 to March 1997. The information does document the company's decisionmaking process during this

one-year period, but the actions are tied to the unique climatic, market, production, and regulatory characteristics of the time. The company's claim that this aged information will disadvantage it in today's market is speculative. The public interest in a better understanding of how the market performed during this period is high. SoCalGas' confidentiality claim for this document is DENIED.

January 4, 1998, Draft Interoffice Memo—Gas Acquisition Priorities Under the GCIM, Attachment 18

The attachment is only a three-page document (apparently a draft) authored by Jim Harrigan. The comments of another person ("Jimn.") are penciled in the margins. The document does present the thought processes of a senior company official about company strategies under the Gas Cost Incentive Mechanism (GCIM) and the potential tradeoffs between shareholder and ratepayer gains.

While the document does disclose corporate thinking about gas acquisition strategies, the content is more an analysis of the pros and cons of certain strategies rather than a definitive statement of corporate policy. The document is almost seven years old and was prepared under different market conditions. If the document has any residual proprietary value, it is outweighed by interest of the public, ratepayers, and this Commission in understanding better how the GCIM has been used and how it might be improved. Finally, Harrigan himself discusses in detail and quotes repeatedly from this document in his public testimony of July 12, 2004, thereby waiving any confidentiality claim. SoCalGas' confidentiality claim is DENIED.

Strategy Reports, GCIM Performance Summary April 1999 to March 2000 and April 2000 to March 2001, Attachments 19 and 20

Attachment 19 is substantially the same as Attachment 3-9 (flow period April 2000-March 2001), discussed earlier (the preparation dates are different). Attachment 20 provides the same type of information in the same format for flow period April 1999 to March 2000. For the reasons set forth in the discussion of Attachment 3-9, SoCalGas' confidentiality claim is DENIED.

Documents Market as Exhibits During the Evidentiary Hearing that SoCalGas Still Maintains as Protected Material

Exhibit 11P (also Attachment 3-9)

SoCalGas' confidentiality claim to this document was previously rejected in the discussion concerning Attachment 3-9, above.

Draft Gas Acquisition Committee Meeting minutes (Exhibit 75P); Draft Gas Acquisition Committee Meeting minutes and Final Minutes (November 19 & December 17, 1996) (Exhibit 76P); Document titled Weekly Risk Meeting—10/3/00 and Gas Acquisition Committee Meeting Agenda (November 15, 2000) (Exhibit 79P)

These documents are the same type of committee meeting materials discussed under Attachment 3-27, above. In this case, many of the documents are older (1996) than those set forth in Attachment 3-27. For the reasons set forth in the discussion of Attachment 3-27, SoCalGas' confidentiality claim is DENIED.

Pursuant to Section 18 of the Modified Protective Order, signed by ALJ Thomas, all of the foregoing information that I have determined not to be confidential remains confidential for five business days following the issuance of this ruling. If an interlocutory appeal is filed within that time, the foregoing information remains confidential for an additional ten business days.

ALJ TerKeurst will issue a separate ruling indicating how this ruling will affect the sealed portions of transcripts, exhibits, and briefs that incorporate or refer to documents now determined not to be confidential.

IT IS SO RULED.

Dated August 31, 2004, at San Francisco, California.

/s/ JOHN E. THORSON

John E. Thorson
Law and Motion
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Claimed Protected Materials on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated August 31, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.